83-317

No. ..-....

IN THE

Supreme Court of the United States

October Term, 1983

SHERMAN BLOCK, Sheriff of the County of Los Angeles, *et al.*,

Petitioners,

vs.

DENNIS RUTHERFORD, HAROLD TAYLOR and RICHARD ORR,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

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Questions Presented.

1. Whether jail inmates have a constitutional right to contact visitation.

2. Whether jail inmates have a constitutional right to be present to observe and make inquiries during general searches of their cells?

Parties.

Petitioners herein are:

SHERMAN BLOCK, Sheriff of the County of Los Angeles, successor in office to Peter J. Pitchess, Appellant below; FRED E. STEMRICK, Assistant Sheriff, successor in office to William Anthony, Appellant below; JAMES W. PAINTER, Chief of the Los Angeles County Sheriff's Department Custody Division, successor in office to John Knox, Appellant below; RON BLACK, Captain Central Jail, successor in office to James White, Appellant below; EDWARD EDELMAN, KENNETH HAHN, and PETER SCHABARUM, Supervisors of the County of Los Angeles and Appellants below; DEANE DANA and MICHAEL D. ANTONOVICH, Supervisors of the County of Los Angeles, as successors in office to James Hayes and Baxter Ward, Appellants below.

Respondents herein are:

DENNIS RUTHERFORD, HAROLD TAYLOR, and RICHARD ORR.

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Opinions Below.

The opinion of the Court of Appeals, entered July 14, 1983, not yet reported, its earlier unreported memorandum opinion (filed August 8, 1980); and the unreported memorandum opinion (filed May 18, 1981), the unreported supplemental memorandum opinion (filed February 15, 1979), and the reported memorandum opinion (*Rutherford v. Pitchess*, 457 F.Supp. 104 (C.D. Cal. 1978)), of the District Court, appear in the appendix hereto.

Jurisdiction.

The judgment of the Court of Appeals for the Ninth Circuit was entered on July 14, 1983, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

Constitutional and Statutory Provisions.

The following constitutional and statutory provisions appear in the appendix hereto:

United States Constitution, Amendment 14, Section 1.

United States Code, Title 28, Sections 1343, 2201, 2202.

United States Code, Title 42, Sections 1983, 1985.

Statement of the Case.

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on July 14, 1983, affirming the orders of the District Court concerning Los Angeles County Central Jail (1) requiring pretrial inmates confined longer than 30 days and concerning whom there is no indication of drug or escape propensities, to be permitted one contact visit a week, up to a maximum of 1,500 such visits a week for all such inmates; and (2) requiring that available inmates be permitted to observe and make inquiries during general searches of their own cell areas.

The present action was filed alleging jurisdiction under 28 U.S.C. §1343 for a claim under 42 U.S.C. §§1983, 1985, and for injunctive and declaratory relief pursuant to 28 U.S.C. §§2201, 2202, as a class action challenging a wide range of conditions of confinement at the Los Angeles County Central Jail, a 5,000 man jail located in downtown Los Angeles, and used primarily for the housing of male inmates awaiting trial on criminal charges. After trial the District Court, in a reported decision (*Rutherford v. Pitchess, supra*), and an unreported supplemental memorandum opinion (filed February 15, 1981), ordered a number of changes in jail conditions. Petitioners appealed three of those orders, including the orders here involved. The orders are stayed pending appeal.

In an earlier unpublished memorandum decision (filed August 8, 1980), the Court of Appeal remanded these orders

to the District Court for reconsideration in light of the intervening decision in *Bell v. Wolfish*, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979).

On remand, in an unreported memorandum opinion (filed May 18, 1981), the District Court acknowledged that *Wolfish* required some differences in analysis, but concluded that it required no difference in result, and reaffirmed its previous orders finding that the categorical rejection of contact visitation exceeded the reasonable requirements of security, and that the ordered search procedures were a necessary prophylactic against improper seizure of inmates' property.

Petitioners again appealed, and the Court of Appeal affirmed the orders with regard to contact visits and cell searches. Petitioners seek review of that judgment of affirmance.

The visitation procedures found constitutionally inadequate by the District Court, permitted daily unmonitored visits with adults and children 12 hours a day between the hours of 8:30 a.m. and 8:30 p.m. The number of such visits average over 2,000 a day, over 63,000 a month. (Admitted facts, CR 133, p. 14, excerpt 142). The visits are conducted in an area where visitors never enter the jail's security, and inmates and visitors are separated by glass and speak over power phones. No direct supervision or searches of visitors or inmates is done or required. Since visitors never enter the jail or come in contact with the inmates, the large number of visits can be accomplished with no prior appointments, screening, or approved visitor lists, and uninhibited by intrusive security measures. (Lonergan decl., CR 88, excerpt 122-125, admitted by stipulation, CR 145).

Under the search procedures found constitutionally inadequate by the Court, cell areas were searched while all

inmates were out of the cell areas for other activities such as meals, exercise, or the like. Under the ordered procedures, all inmates are to be removed to a separate day room area, and the available occupants of particular cells brought back to observe and make inquiries during the search of their particular cell.

REASONS FOR GRANTING THE WRIT.

1. The Decision Below Concerning Contact Visitation Raises a Significant and Recurring Issue Conflicting With the Decisions of Other Courts of Appeal, and Ripe for Review.

A right to contact visitation is regularly asserted in most prisoners' rights litigation. Contact visitation, which is understandably desirable to detainees, presents substantial security problems, opportunities for importation of contraband, and potential for violence and escape, with direct and serious consequences to jail staff, inmates, and the public.

This Court touched upon, but declined to decide the question in *Bell v. Wolfish, supra*, 441 U.S. 520, as the issue was not challenged in that appeal. However, this Court observed with regard to another issue, the validity of strip searches conducted to discourage smuggling of contraband during such visits, that the need for such searches could be obviated by abolishing contact visitation altogether. Thereafter, in another case, this Court reversed and remanded the issue of contact visitation for reconsideration by the Second Circuit in light of *Bell v. Wolfish, supra*. *Marcera v. Chindlund*, 595 F.2d 1231 (2d Cir. 1979), vacated, *Lombard v. Marcera*, 442 U.S. 915, 99 S.Ct. 2833, 61 L.Ed.2d 281 (1979).

The question of contact visitation appeared to be presented for resolution with the granting of certiorari on that issue in *Jones v. Diamond*, 636 F.2d 1364 (5th Cir. 1981), cert. granted sub nom., *Ledbetter v. Jones*, 452 U.S. 954, 101 S.Ct. 3106, 69 L.Ed.2d 970 (1981); however, the matter was dismissed pursuant to Rule 53. *Ledbetter v. Jones*, 453 U.S. 950, 102 S.Ct. 27, 69 L.Ed.2d 1033 (1981).

The circuits that have considered the issue remain in apparent conflict, at least in terms of result reached, the

weight of authority being that contact visitation is not constitutionally required. *Feeley v. Sampson*, 570 F.2d 364, 373 (1st Cir. 1978); *Inmates of Allegheny Cnty. Jail v. Pierce*, 612 F.2d 754, 757-761 (3d Cir. 1979); *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975); *Jordan v. Wolke*, 615 F.2d 749, 751 (7th Cir. 1980); *Ahrens v. Thomas*, 570 F.2d 286, 290 (8th Cir. 1978); *Ramos v. Lamm*, 639 F.2d 559, 580 (10th Cir. 1980). *Cf. Campbell v. McGruder*, 580 F.2d 521 (D.C. Cir. 1978); *West v. Infante*, 707 F.2d 58 (2d Cir. 1983); *Jones v. Diamond, supra*, 636 F.2d 1363, 1377 (5th Cir. 1981). The decision of the Ninth Circuit Court of Appeals is the only post-*Wolfish* Circuit Court of Appeals' decision, specifically requiring contact visitation at a particular facility.

2. The Decision Below Concerning Cell Searches Is in Conflict With an Applicable Decision of This Court.

The District Court's decision requiring that general cell searches be conducted in the presence of available inmate occupants as necessary to minimize the risks of improper confiscation of inmate possessions is in conflict with this Court's reversal of an order requiring similar search procedures in *Bell v. Wolfish, supra*, 441 U.S. at 455-457.

Conclusion.

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted,

DONALD K. BYRNE,
Chief Deputy County Counsel,
FREDERICK R. BENNETT,
Principal Deputy County Counsel,
Counsel for Petitioners.

APPENDIX.

1. Opinions of the Court of Appeals.

A. Opinion Filed July 14, 1983.

In the United States Court of Appeals for the Ninth Circuit.

Dennis Rutherford, et al., Plaintiffs-Appellees, v. Peter J. Pitchess, et al., Defendants-Appellants. No. 81-5461. D.C.# CV-75-4111-WPG.

OPINION.

Appeal from the United States District Court for the Central District of California. William P. Gray, District Judge, Presiding. Argued and submitted December 7, 1982.

Before: TANG, SCHROEDER, and POOLE, Circuit Judges. SCHROEDER, Circuit Judge:

This is a class action against Los Angeles County officials[1] on behalf of pretrial detainees in the Los Angeles County Central Jail. After trial the district court ordered twelve different changes in jail conditions. The county accepted nine of those changes which covered a variety of problems, including overcrowding, inadequate exercise, lack of clean clothing and telephone access, and insufficient time to eat meals. It appealed the remaining three.

In an earlier unpublished memorandum decision, we remanded the case to allow the district court to reconsider the three challenged orders in the light of the intervening Supreme Court decision in *Bell v. Wolfish*, 441 U.S. 520, 99 S. Ct. 1861 (1979) (*Wolfish*). On remand, the district court acknowledged that *Wolfish* required some differences in

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[1]Named as defendants in this action are: Los Angeles County Sheriff Peter J. Pitchess; County Corrections Chief John Knox; Central Jail Commander James White; and Los Angeles County Supervisors Edward Edelman, Kenneth Hahn, James Hayes, Peter Schabarum, and Baxter Ward. We refer to these defendants collectively as "the county."

analysis, but concluded that it required no difference in result. The court reaffirmed its previous order with respect to all three conditions. The county again appeals.

The challenged orders, which have been stayed pending appeal, require that the jail administrators: (1) allow low-risk detainees who are imprisoned for more than one month to receive one contact visit per week, up to a maximum of 1,500 such visits per week; (2) permit inmates to observe searches of their cells; and (3) reinstall transparent windows in the cells.[2] We reverse the order requiring reinstallation of windows and affirm the other two.

I.

The Legal Standards

The district court's original orders were entered in 1979 after a seventeen-day court trial and two personal inspections of the jail. Judge Gray explained his rulings in two memoranda of decision, both of which reflected the court's consideration of relevant aspects of the detainees' confinement,

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[2]The exact language of the challenged orders is as follows:

> 2.(b) *Contact Visits*. Commencing not more than ninety days following the date of this order, the defendants will make available a contact visit once each week to each pre-trial detainee that has been held in the jail for one month or more, and concerning whom there is no indication of drug or escape propensities; provided, however, that no more than fifteen hundred such visits need be allowed in any one week. In the event that the number of requested visits in any week exceeds fifteen hundred, or such higher number as the Sheriff voluntarily undertakes to accommodate, a reasonable system of rotation or other priorities may be maintained. The lengths of such visits shall remain in the discretion of the Sheriff.
>
> 5. *Restoration Of Windows*. Within ninety days following the filing of this order, transparent windows shall be restored in each portion of the jail from which they previously have been removed.
>
> 8. *Cell Searches*. Inmates that are in the general area when a 'shakedown' inspection of their cells is undertaken shall be permitted to be sufficiently proximate to their respective cells that they may observe the process and respond to such questions or make such requests as circumstances may indicate.

including whether the challenged restrictions were reasonably necessary to the maintenance of security, order, and safety in the institution.

In our decision remanding the case in light of *Wolfish*, we summarized the standards which the district court should apply:

> *Bell v. Wolfish*, 441 U.S. 520 (1979), . . . set forth two tests for evaluating constitutional attacks by pretrial detainees on conditions and restrictions during their confinement. Where a condition implicates the fourteenth amendment's protection against deprivation of liberty without due process, the proper inquiry is whether the condition amounts to punishment. *Id.* at 538. A condition is punitive if there is a showing of express intent to punish. Otherwise, if a particular condition is reasonably related to a legitimate nonpunitive objective, it does not, without more, amount to punishment. *Id.* Legitimate objectives include both insuring the detainee's presence at trial and facilitating the effective management of the facility. *Id.* at 539-40.
>
> Where a restriction implicates another constitutional right as well, a court must assess whether the condition or restriction impermissibly infringes that right. In making that assessment, however, the court must recognize that the essential goals of maintaining security and preserving internal order and discipline may require some limitation on the constitutional rights of detainees, *id.* at 546, and must grant wide-ranging deference to prison administrators in the adoption of policies to serve these goals. *Id.* at 547-58.

Rutherford v. Pitchess, Nos. 79-3061/79-3367, slip op. at 2-3 (9th Cir. Aug. 8, 1980) (mem.). We commented upon the relationship between the analysis used by the district court in this case and the Supreme Court in *Wolfish* as follows:

> The district court here articulated standards that track closely those the Supreme Court subsequently laid down in *Wolfish*. Relying on case law to the date of its decision, however, the district court also observed that proof of the availability of less restrictive means demonstrated that prison officials had exaggerated their response to security concerns. *Wolfish* rejected this mode of analysis. *Id.*

Id. at 3. On remand, Judge Gray reaffirmed his prior orders, stating that the county's actions "exceeded the reasonable requirements of security."

We review the district court's decision upon remand in light of the controlling authority and our earlier mandate. In doing so, we recognize that the authority to make policy choices concerning prisons is not a proper judicial function. *Wolfish, supra*, 441 U.S. at 562, 99 S. Ct. at 1886. Nevertheless, we also are conscious of the fact that pre-trial detainees, who have not been convicted of any crime, retain important constitutional rights which must be protected.

A court confronted with challenges to prison practices therefore faces an important and difficult task. To fulfill the Supreme Court's mandate under *Wolfish*, it must explore and analyze two ofttimes competing sets of needs and objectives — the penal institution's interest in institutional administration and security and the detainee's interest in protecting and exercising his retained constitutional rights. Only after such a thorough review can a court decide whether or not a particular prison condition is an unreasonable, exaggerated response to the legitimate nonpunitive objectives of a detention facility.

Here, the trial court's factual findings are for the most part not challenged by the county and we defer to those findings as they have not been shown to be clearly erroneous. Fed. R. Civ. P. 52(a). The county assails the court's

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F.2d 1237, 1245 (9th C
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II.

Contact Visits

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371 F. Supp. 594, 601
(2d Cir. 1974).

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for those detainees who spend more than thirty days in the facility and who can be identified as low-risk detainees. The court therefore entered a narrow order providing for one contact visit per week for such detainees and for a maximum number of contact visits per week in the institution. The court found that only modest physical alterations would be necessary to permit this small number of visits.[3]

The county argues in this appeal that the contact visitation order is improper because the district court relied on evidence of visitation practices in other county institutions in order to arrive at a "lowest common denominator." The Supreme Court in *Wolfish* stated that the Due Process clause does not require such a security standard, "whereby a practice permitted at one penal institution must be permitted at all institutions." 441 U.S. at 554, 99 S. Ct. at 1882.

Our review of the district court's opinion, however, convinces us that Judge Gray fashioned a narrowly drawn order based upon the capacities, limitations, and security risks of this particular jail. In reaffirming his order on remand, Judge Gray noted that he had tried "to find the 'mutual accommodation between institutional needs and objectives and the provisions of the constitution that are of general application,' to which Justice Rehnquist referred in his opinion (441 U.S. at 546)." He concluded that the "categorical rejection of all proposals involving [contact] visits" is not consistent with this approach. We agree with Judge Gray in this regard.

The district court's analysis in this case is fully consistent with the approach approved by the Fifth Circuit in *Jones v. Diamond*, 636 F.2d 1364, 1377-78 (5th Cir.) (en banc), *cert. dismissed*, 453 U.S. 950, 102 S. Ct. 27 (1981). In

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[3]The maximum number of contact visits was set at 1,500. By contrast, the total number of visitors at Central Jail per week exceeds 15,000.

Diamond the Fifth Circuit held that the determination of whether contact visitation may be denied for legitimate security reasons is a decision peculiar to each penal institution: "Whether or not contact visitation rights should be accorded pretrial detainees in the Jackson County jail can be decided only after a full hearing on the facilities available in both jails and the security requirements in each." 636 F.2d at 1377.

Nor is affirmance of the district court's order in conflict with other post-*Wolfish* circuit opinions which have disapproved of increased contact visitation. For example, in *Ramos v. Lamm*, 639 F.2d 559 (10th Cir. 1980), *cert. denied*, 450 U.S. 1041, 101 S. Ct. 1759 (1981), the court of appeals refused to approve a district court decision ordering unrestricted contact visitation. However, the preexisting prison facility policy in that case permitted even more liberal contact visitation than the order on review here; *all* inmates were allowed to kiss their visitors at the beginning and end of each visit, hold hands, and hold small children on their laps. The court of appeals deferred to this existing policy because "it is a reasonable response to the legitimate concerns of prison security." 639 F.2d at 580.

In *Jordan v. Wolke*, 615 F.2d 749 (7th Cir. 1980), the court also refused to enforce a district court order requiring unrestricted contact visitation for all detainees. The court noted that only five percent of the detainees stayed in the facility for over thirty days, implicitly recognizing that different considerations may apply when courts consider requiring contact visits for long-term as opposed to short-term detainees. *See also* 1979 B.Y.U. L.Rev. 1022, 1034-35. Here, the record reflects that the percentage of long-term detainees in L.A. County Jail is considerably higher.

In *Inmates of Allegheny County Jail v. Pierce*, 612 F.2d 754 (3d Cir. 1979), the court of appeals affirmed the district

court's ruling that contact visitation could be prohibited. The district court's findings, which were held not to have been clearly erroneous, were based on the conditions and security problems existing at that particular institution.

The twin threads running through all these post-*Wolfish* cases are first, that contact visitation is not constitutionally mandated for all detainees in all facilities; and second, that the denial of all contact visitation is not per se beyond court scrutiny. The pattern which emerges is one which recognizes the important security interests of the institution but at the same time recognizes the psychological and punitive effects which the prolonged loss of contact visitation has upon detainees, who have not as yet been convicted of any crime. The institution's security interests do not always predominate. A blanket restriction on contact visits for all detainees may present an unreasonable, exaggerated response to security concerns at a particular facility. The district court's order here, granting a limited number of contact visits for only those who have been held more than thirty days and who do not constitute security risks, fits harmoniously within this pattern. We therefore affirm that order.

III

Observation of Cell Searches

The second challenged jail practice is that of conducting unannounced "shakedown" searches of cells outside the presence of the inmates. The need for such searches themselves is not at issue, only the need for conducting them in a manner which prevents the prisoner from observing the search.[4] The district court's order requires that individual

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[4]Appellees concede that such searches are necessary to prevent the accumulation of contraband and other items not allowed in the cells, such as food or excessive clothing and reading material, and to maintain the security of the facility.

inmates in the general area of their cells when a "shake-down" search occurs should be "near enough to observe the process and raise or answer any relevant inquiry."

Before entering this order, Judge Gray visited the prison and personally observed four alternative methods of conducting cell searches. As with the order regarding contact visits, Judge Gray carefully took into account the conditions at the facility and the security concerns expressed by prison officials, including the possibility that the prisoner's presence would disrupt the search or, more important, would frustrate it by disclosing safe hiding places. He also considered the county's further argument that confrontation during searches would create security risks too costly to deal with.

In support of the plaintiffs, Judge Gray considered testimony and observed first-hand that the county's method of searching all the cells in a row while the inmates were contained in a day room, or elsewhere, presents its own risks. For example, prison officials may improperly confiscate the prisoner's meager possessions. The prisoners also objected that this practice encouraged officials to "tear their cells apart."

In analyzing the prison's procedure, Judge Gray recognized the competing needs and objectives of the parties, and therefore stated in his opinion that his order only required that individual inmates be brought to the cell area one at a time to observe the search of their respective cells. This procedure was designed to meet the plaintiffs' concerns and avoid confrontation and additional expense.

The county argues in this appeal, however, that the Supreme Court's decision in *Wolfish* forecloses any order which allows pre-trial detainees to observe cell searches because, in the county's view, *Wolfish* held that the practice of con-

ducting searches outside of a detainee's presence is, in every instance, rationally related to legitimate security concerns. We disagree. While the court in *Wolfish* did reverse an order permitting inmates to observe shakedown searches of their cells, it did so because it concluded that a rule preventing observation does not, in itself, render a search "unreasonable" under the fourth amendment. 441 U.S. at 557, 99 S. Ct. at 1883-84. In our view this holding does not preclude an observation order based on the circumstances and evidence present here; there are significant differences between this case and *Wolfish*.

The challenged district court order in *Wolfish*, for example, failed to take into account the concerns of prison officials that inmates could frustrate searches by "distracting personnel and moving contraband from one room to another ahead of the search team." 441 U.S. at 555, 99 S. Ct. at 1883. Here, by contrast, these concerns were clearly addressed by Judge Gray and taken into account in framing the cell search order. The order approves of the unannounced removal of inmates from their cells and their detention in the day room while the cell row is being searched. Individual detainees need only be brought back from the day room to observe the search of their own cell.

Another significant difference is that the lower court in *Wolfish* had taken the position that the searches infringed the detainees' interest in privacy and were "unreasonable" within the meaning of the fourth amendment. The Supreme Court sharply criticized this holding, stating that "[p]ermitting detainees to observe the searches does not lessen the invasion of their privacy. . . ." 441 U.S. at 557, 99 S. Ct. at 1883. Here, however, in considering the Supreme Court's opinion in *Wolfish*, the district court emphasized that its order was not based solely upon fourth amendment concerns, but was, to a large extent, also based

upon the protection of the inmates' right to due process of law under the fourteenth amendment. Judge Gray found, given all of the evidence before him, including his own observations in the prison, that the risks of improper confiscation of a detainee's few cherished possessions were great and could not be redressed in any action to recover the value of the articles taken.

The district court specifically referred to one incident which was significant to its conclusion that improper deprivations could only be avoided by injunctive relief. During the demonstration of one of the alternative methods of search conducted during the district court's visit, the deputy conducting the search started to confiscate a prisoner's magazines. Since in this alternative the prisoner was permitted to observe the search, he was able to explain to the deputy that the two magazines did not violate prison regulations on the currency and condition of magazines. Hence observation prevented the taking and destruction of materials valuable to a prisoner. As the district court observed: "[t]hese are small matters; but they are important to the detainees." Thus, Judge Gray concluded that "to allow these prized possessions to be confiscated under subjectively enforced regulations, without giving the possessor any opportunity to explain or protest or entreat, deprives him of his property without due process of law."

Nevertheless, the county still suggests that the district court's order cannot stand because, as a matter of law, language in a footnote of the *Wolfish* opinion prevents courts from examining the effect of search practices on property

rights of inmates. *See* 441 U.S. at 558 n.38, 99 S. Ct. at 1884.[3]

In our view the *Wolfish* footnote does not preclude such considerations; the lower courts in *Wolfish* had not even considered possible violations of property rights. The Court in this footnote merely points out that, even assuming that searches violate prisoner property rights, a wholesale challenge to a prison search policy must still be analyzed with reference to jail officials' concerns and judgments on security matters. The record in this case clearly reflects that Judge Gray, in fashioning his order modifying jail search practices, paid ample deference to the jail officials' concerns about security problems. We therefore uphold Judge Gray's order with respect to cell search procedures.

IV

Restoration of Windows

The last challenged order is Judge Gray's requirement that the county reinstall transparent windows in those portions of the jail which originally had such windows. Shortly after L.A. County Jail was constructed, the original windows, made of wired glass, were replaced. Eventually, currently existing concrete enclosures were put in to cover the openings. It is undisputed that these changes were brought

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[3]The complete text of footnote 38 is as follows:

> It may be that some guards have abused the trust reposed in them by failing to treat the personal possessions of inmates with appropriate respect. But, even assuming that in some instances these abuses of trust reached the level of constitutional violations, this is not an action to recover damages for damage to or destruction of particular items of property. This is a challenge to the room-search rule in its entirety, and the lower courts have enjoined enforcement of the practice itself. When analyzed in this context, proper deference to the informed discretion of prison authorities demands that they, and not the courts, make the difficult judgments which reconcile conflicting claims affecting the security of the institution, the welfare of the prison staff, and the property rights of the detainees. *Jones v. North Carolina Prisoners' Labor Union*, 433 U.S., at 128, 97 S. Ct., at 2539.

about by the fact that many of the glass windows were broken by the inmates and thus seriously interfered with security at the facility. The county considered installing other transparent materials, but these were disapproved by the fire department due to fire hazard regulations.

Plaintiffs argue that they have a psychological need for exposure to the outside world and that the lack of windows along with other conditions at the jail, including inadequate rooftop exercise time, overcrowding, and the lack of indoor recreational facilities, coalesced to create a punitive atmosphere violative of due process. They allege that Judge Gray's order to restore the windows is designed, in part, to compensate for his refusal to issue comprehensive orders regarding other aspects of the jail's conditions.

Judge Gray's order was based on the ground that "the [inmates'] right not to be deprived of all view of the outside world far outweighs the inferred danger of serious escape attempts or contraband importation. . . ." This conclusion was premised on his opinion that, given the physical layout of the jail and windows, and the intense supervision provided, the possibility of escape was remote and prison officials could use their "resourcefulness" to prevent contraband importation. Judge Gray also was not convinced that the county had made a complete search for transparent plastic windows that would comply with fire safety standards. On remand, Judge Gray likened the lack of windows to "loading a detainee with chains and shackles and throwing him in a dungeon. . . ." *See Wolfish, supra*, 441 U.S. at 539 n.20, 99 S. Ct. at 1874. Although he did not find any express intent to punish, he concluded, in effect, that such an intent could be inferred.

The difficulty with Judge Gray's order and his explicative reasoning is that it fails to account for the jail's history of very real and serious security problems with respect to win-

dows, a history which is not challenged by the appellees. Uncontroverted evidence shows that every measure attempted prior to the installation of the concrete enclosures proved unsatisfactory. When the broken wired glass windows were replaced, first by steel screens and then by steel plates, both the screens and plates were torn down by the inmates, and the security problems concerning escape and access to contraband continued.

Nor does the order adequately address the testimony presented by the county that "non-breakable" glass is unsuitable in that it can, in fact, be broken by objects available to the inmates and that the material used in other transparent plastic windows will not meet fire regulations. Without the appropriate findings and evidence to support them, the concrete windows cannot be characterized as an "exaggerated response" by county officials in this case. *See Wolfish, supra*, 441 U.S. at 561-62, 99 S. Ct. at 1885-86; *cf. Hoptowit v. Ray, supra*, 682 F.2d at 1246-47 (totality of conditions may not justify relief which must be based on showing of independent constitutional violation), *citing Wright v. Rushen*, 642 F.2d 1129, 1132-33 (9th Cir. 1981). Since the record contains no indication that, given the security problems attendent to the use of windows in this facility, any more appropriate response exists, we must conclude that the county's action with respect to the windows was justified by legitimate security objectives. The district court therefore erred in requiring reinstallation of transparent windows.

V

Conclusion

We have carefully and thoroughly reviewed the district court's orders to determine, in each instance, whether the standards set forth by the Supreme Court in *Wolfish* properly

were followed. The orders with respect to contact visitation and cell searches are affirmed. The order with respect to transparent windows is reversed. Each party is to bear its own costs.

DISSENTING OPINION.

Rutherford et al. v. Pitchess, et al., No. 81-5461.

Filed: July 14, 1983.

POOLE, Circuit Judge, concurring in part and dissenting in part:

Because I believe that the outcome is controlled by *Bell v. Wolfish*, 441 U.S. 520 (1979) ("*Wolfish*"), I dissent from part III of this opinion, concerning prisoner observation of cell searches. I concur in the remaining portions of the opinion.

The majority seeks to find a distinction between this case and the situation in *Wolfish*, insofar as both consider the problems posed by cell "shakedowns." A fair reading of the Supreme Court's holding in *Wolfish* would not permit a distinction with meaning to be drawn. In *Wolfish*, the prison officials established a policy which did not permit prisoners to observe the searches of their cells, citing security concerns and a fear that the prisoners would be able to evade or frustrate the searches. *Id.* at 555. The prisoners objected because they suspected the guards of theft. *Id.* at 556. In the present case, the identical policy had been adopted by the jail officials, citing the same security and evasion concerns; the prisoners object essentially because they fear the improper confiscation of their property.

Faced with the competing concerns which underlay the search policy and the objections thereto, the Court held that the policy should not be enjoined, stating:

> . . . proper deference to the informed discretion of prison authorities demands that they, and not the courts,

> make the difficult judgments which reconcile conflicting claims affecting the security of the institution, the welfare of the prison staff, and the property rights of the detainees.

Id. at 557 n.38 (citations omitted). The Court's language could hardly be more clear, and there is no basis for holding that it does not provide controlling guidance in this case.

The distinctions relied upon by the majority are, I believe, without substance. First, it is claimed that the district court in *Wolfish* failed to weigh the prison official's security and evasion concerns in framing its order. Since the district judge in this case did expressly address those concerns, his order—essentially the same as that issued by the district court in *Wolfish*—is thought to be permissible. However, it is factually inaccurate to state that the district court in *Wolfish* did not also weigh those concerns. *See United States ex rel. Wolfish v. Levi*, 439 F.Supp. 114, 148-49 (S.D.N.Y. 1977).

A second basis for distinguishing *Bell v. Wolfish* cited by the majority is that the constitutional basis for invalidating the search policy relied upon by the district and appellate courts in that case was limited to privacy and fourth amendment concerns. In the case at bar, the majority notes, the district court found a due process claim grounded in the improper confiscation of prisoners' property. Again, this distinction is strained, to say the least. While the district court in *Wolfish* confined its constitutional discussion to fourth amendment concerns, both that court and the Second Circuit on appeal stressed that the primary concern of the prisoners was the potential theft of their property—the same, allegedly new concern raised by Judge Gray here. *See* 439 F.Supp. at 148-49; 573 F.2d at 131. Further, the Second Circuit in *Wolfish* explicitly noted that the cell searches could give rise to a due process claim in certain circum-

stances. *See* 573 F.2d at 131 n.29 (due process requires that receipts be given for property seized during cell searches).

Further, in *Wolfish* the Court determined that injunctive relief barring cell searches unless the prisoner was permitted to observe the search was improper when the concern was the possible theft of property. The Court suggested instead that actions for damages were the proper remedy, *even if the thefts rose to the level of constitutional violations*. *See* 441 U.S. at 557 n.38. This, of course, reflects the traditional doctrine that injunctive relief is inappropriate unless there has been a showing that legal remedies are inadequate. *Beacon Theatres v. Westover*, 359 U.S. 500, 506-07 (1959). But even if the potentially repetitive incidence of violations of personal property rights could under some circumstances warrant injunctive relief, the Supreme Court has told us, on facts almost exactly similar to those found here, that this cell-search practice violates no constitutional provision and should not be conditioned on the inmate's physical presence. *Bell v. Wolfish*, 441 U.S. at 555-557.

The district court in *Wolfish* and Judge Gray here considered the same concerns of the correctional officials and the inmates, and ordered the same injunctive relief. The Supreme Court rejected that approach in *Wolfish*, and our obligation now must be to heed the plain language of the Supreme Court's ruling and to reverse the order issued by the district court.

B. Memorandum Opinion Filed August 8, 1980.

United States Court of Appeals for the Ninth Circuit.

Dennis Rutherford, Harold Taylor, and Richard Orr, Plaintiffs-Appellees, v. Peter J. Pitchess, as Sheriff of the County of Los Angeles; William Anthony, as Assistant Sheriff of the County of Los Angeles; John Knox, as Chief of the Corrections Division of the Los Angeles County Sher-

iff's Department; James White, as Commander of the Los Angeles County Central Jail; and Edward Edelman; Kenneth Hahn, James Hayes, Peter Schabarum and Baxter Ward, as Supervisors of the County of Los Angeles, Defendants-Appellants. Nos. 79-3061, 79-3367. DC #CV 75-4111-WPG.

Appeal from the United States District Court for the Central District of California, William P. Gray, District Judge, presiding.

Before: Markey,* Court of Customs & Patent Appeals Judge, and Pregerson and Ferguson, Circuit Judges.

Plaintiff pretrial detainees brought this class action as a comprehensive challenge to conditions of their confinement at the Los Angeles Central Jail. After a 17-day court trial and two personal inspections of the jail, the district court ordered 12 changes in jail conditions and restrictions. The court explained its rulings in two thorough memoranda of decision, which revealed the court's careful consideration of all the aspects of the detainees' confinement.

The court's orders required jail administrators to: (1) cease making "overflow" men sleep on mattresses on the floors; (2) permit unaccompanied minor children to visit an inmate parent upon the inmate's request; (3) allow all inmates two and one-half hours' exercise per week, and work toward allowing one hour per day; (4) re-establish television viewing in the day rooms; (5) develop a new program for processing inmates for court appearances so that those on trial do not leave bed before 6:00 a.m., do not spend time confined in holding cells, travel 30 minutes or less on buses and return not later than 8:00 p.m.; (6) eliminate overcrowding in the holding cells for prisoners who must make court

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*The Honorable Howard T. Markey, Chief Judge, United States Court of Customs and Patent Appeals, sitting by designation.

appearances but are not then on trial; (7) provide more telephones; (8) allow inmates at least 15 minutes for meals; (9) furnish clean laundry twice weekly; (10) permit inmates to watch the guards conducting searches of their cells; (11) re-install windows in the cells; and (12) allow low-risk detainees who are imprisoned for more than one month to receive one contact visit per week, providing for a maximum of 1,500 such visits per week. The Sheriff appeals only the latter three requirements. The remaining nine are therefore final.

The attorney for the pretrial detainees, an American Civil Liberties Union (ACLU) attorney, moved the court for an award of attorney's fees under 28 U.S.C. § 1988. He requested $201,266 for 1006.33 hours' work. The court awarded $90,000, which it calculated on the basis of $60/hour for 1,000 hours, with a 1.5x incentive multiplier. The Sheriff appeals the award.

INJUNCTIVE RELIEF

After the district court issued its orders, the Supreme Court decided *Bell v. Wolfish*, 441 U.S. 520 (1979), in which it set forth two tests for evaluating constitutional attacks by pretrial detainees on conditions and restrictions during their confinement. Where a condition implicates the fourteenth amendment's protection against deprivation of liberty without due process, the proper inquiry is whether the condition amounts to punishment. *Id.* at 538. A condition is punitive if there is a showing of express intent to punish. Otherwise, if a particular condition is reasonably related to a legitimate nonpunitive objective, it does not, without more, amount to punishment. *Id.* Legitimate objectives include both insuring the detainee's presence at trial and facilitating the effective managment of the facility. *Id.* at 539-40.

Where a restriction implicates another constitutional right as well, a court must assess whether the condition or restriction impermissibly infringes that right. In making that assessment, however, the court must recognize that the essential goals of maintaining security and preserving internal order and discipline may require some limitation on the constitutional rights of detainees, *id.* at 546, and must grant wide-ranging deference to prison administrators in the adoption of policies to serve these goals. *Id.* at 547-48.

The district court here articulated standards that track closely those the Supreme Court subsequently laid down in *Wolfish*. Relying on case law to the date of its decision, however, the district court also observed that proof of the availability of less restrictive means demonstrated that prison officials had exaggerated their response to security concerns. *Wolfish* rejected this mode of analysis. *Id.*

Accordingly, we must remand the case to the district court for reconsideration of the three challenged orders in light of *Bell v. Wolfish*. See *Lombard v. Marcera*, 442 U.S. 915 (1979), *vacating for reconsideration, Marcera v. Chinlund*, 595 F.2d 131 (2d Cir. 1979). With its extensive knowledge of all the conditions of Central Jail and the factors underlying the prison administrators' actions, the district court can apply the *Wolfish* standards without further trial on the facts.

ATTORNEY'S FEES

The Sheriff attacks the award of attorney's fees on three grounds: (1) the district court did not conduct an evidentiary hearing; (2) the fees are unreasonable and produce a windfall; and (3) the court did not set forth the factors underlying its decision.

While the district court did not conduct a full evidentiary hearing with witnesses, it did review numerous documents,

including deposition testimony and affidavits, and it conducted an in-court proceeding on the attorney's fees issue, the transcript of which runs ten pages. Moreover, the Sheriff has not disputed any of the facts material to decision of the ACLU's motion for attorney's fees, and the trial court would have discretion whether to conduct an evidentiary hearing even if the motion did involve disputed facts. Fed. R. Civ. P. 43(e).

Similarly, we reject the Sheriff's argument that the fees are per se unreasonable because awarding a public interest law firm fees computed under prevailing market rates produces a windfall and because the district court used an incentive multiplier. It is well established that a court setting a reasonable fee award must consider the twelve factors initially propounded by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). *Dennis v. Chang*, 611 F.2d 1302, 1306 & n.9 (9th Cir. 1980); *Seymour v. Hull & Moreland Engineering*, 605 F.2d 1105 (9th Cir. 1979). The *Johnson* standards apply regardless of whether the prevailing attorney works for a public interest law firm. *Dennis v. Chang, supra*, 611 F.2d at 1306; *Brandenburger v. Thompson*, 494 F.2d 885, 889 (9th Cir. 1974). The use of an incentive multiplier is appropriate where the possibility of success is contingent and the quality of the work is high. *See Stanford Daily v. Zurcher*, 64 F.R.D. 680 (N.D. Cal. 1974), *aff'd*, 550 F.2d 464 (9th Cir. 1977), *rev'd on other grounds*, 436 U.S. 547, 553 n.3 (1978), *cited with approval in* S. Rep. No. 1011, 94th Cong., 2d Sess. 6, *reprinted in* [1976] U.S. Code Cong. & Admin. News 5908, 5913.

Because the district court did not set forth the array of factors underlying its fee decision, however, we must remand the issue to allow the court to state the factors contributing to its fee award. *Ellis v. Cassidy*, slip op. at 3852

(June 20, 1980); *Fountila v. Carter*, 571 F.2d 487, 496 (9th Cir. 1978). *See Gluck v. American Protection Industries*, slip op. at 3159 (May 12, 1980).

REMANDED for further proceedings consistent with this opinion.

2. Opinions and Judgment of the District Court.

A. Memorandum Decision Filed May 18, 1981.

United States District Court, Central District of California.

Dennis Rutherford, Harold Taylor and Richard Orr, et al., Plaintiffs, vs. Peter J. Pitchess, et al., Defendants. Case No. CV 75-4111-WPG.

MEMORANDUM OF DECISION.

On February 15, 1979, this court, after a trial of the class action here concerned, entered an order requiring several changes in practices and conditions of confinement in the Los Angeles County Central Jail (the jail). Three of these requirements were appealed. On August 8, 1980, the Court of Appeals remanded the case to this court for reconsideration of the three challenged orders in light of *Bell v. Wolfish*, 441 U.S. 520 (1979), which was decided after those orders were rendered.

The three orders here concerned read as follows:

> "2.(b) *Contact Visits*. Commencing not more than ninety days following the date of this order, the defendants will make available a contact visit once each week to each pre-trial detainee that has been held in the jail for one month or more, and concerning whom there is no indication of drug or escape propensities; provided, however, that no more than fifteen hundred such visits need be allowed in any one week. In the event that the number of requested visits in any week exceeds fifteen hundred, or such higher number as the Sheriff voluntarily undertakes to accommodate, a reasonable system of rotation or other priorities may be maintained. The lengths of such visits shall remain in the discretion of the Sheriff."
>
> "5. *Restoration Of Windows*. Within ninety days following the filing of this order, transparent windows shall be restored in each portion of the jail from which

they previously have been removed."

"8. *Cell Searches*. Inmates that are in the general area when a 'shakedown' inspection of their cells is undertaken shall be permitted to be sufficiently proximate to their respective cells that they may observe the process and respond to such questions or make such requests as circumstances may indicate."

The factual findings and the legal analyses upon which such orders were based are set out at length in a Memorandum of Decision dated July 25, 1978 (457 F. Supp. 104) and a Supplemental Memorandum of Decision dated February 15, 1979. In those memoranda I undertook to discuss the considerations that guided this court in its attempt to find the appropriate balance between the competing goals of institutional security, order and safety, on the one hand, and the need to preserve for the inmate such of his constitutional rights as the fact of his incarceration permit.

Pursuant to the mandate of the Court of Appeals, I have studied thoroughly the opinion in *Bell v. Wolfish* and have reexamined my memoranda of July 25, 1978, and February 15, 1979, in light of its teachings. I find nothing in *Bell v. Wolfish* that renders inappropriate any of the three challenged orders, and they therefore are reaffirmed.

Justice Rehnquist's opinion in *Bell v. Wolfish* asserts at the outset that ". . . under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law." (441 U.S. at 535). It then states that the court must decide whether the disability complained of ". . . is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose. [Citation omitted] Absent a showing of an expressed intent to punish on the part of detention facility officials, that determination generally will turn on 'whether an alternative purpose to which [the restriction]

may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it].' " (Citations omitted).

This court does not conclude that the Sheriff or his subordinates were consciously motivated by a desire to punish in creating the situations that my orders sought to remedy. However, in each instance, the conclusion is believed to be inescapable that the action was, in the words of the Supreme Court, ". . . excessive in relation to the alternative purpose assigned to it." (Quoted *supra*). The assigned purpose was security, but, as I undertook to set out in the earlier memoranda, the deprivation imposed upon the detainees clearly exceeded the reasonable requirements of security. I conclude from the opinion in *Bell v. Wolfish* that under such circumstances an intent to punish may be inferred, irrespective of the actual motivation of the authorities. The punishment imposed upon an inmate can be no more tolerable because it stems from an unreasonable fixation upon security rather than from a desire to be vindictive. I believe that Justice Rehnquist recognized this in his reference, in footnote 20, to an example of loading a detainee with chains and shackles.

Thus, it seems to me that, regardless of how it is phrased, the test still remains: "What is reasonable under the circumstances? This is the question that I sought to answer in the memoranda upon which the three orders were based. I was trying to find the "mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application," to which Justice Rehnquist referred in his opinion. (441 U.S. at 546).

Contact Visits. Surely, it cannot be denied that to deprive an inmate, for long periods of time, of any opportunity to embrace his wife or hug his children is very traumatic treatment. And if such treatment is not made necessary by the

reasonable requirements of security, it constitutes severe punishment. Naturally, any allowance of contact visits creates problems for the jailer, and, naturally, he would prefer to avoid such problems altogether. However, these well-recognized problems cannot be considered intolerable if limitations are imposed as to numbers and frequency of visits allowed, and if such visits are accorded only to those who are identified as low security risks. To my own knowledge, many other penal institutions, including the Metropolitan Correctional Center in New York City with which the decision in *Bell v. Wolfish* was concerned, have regularly accorded contact visits.

For the defendants here to make categorical rejection of all proposals involving any such visits is believed to constitute overreaction that is not consistent with the balancing process that the Constitution requires. In light of such refusal to undertake such balancing process, I have felt obliged to do so, as is shown in my earlier memoranda. Paragraph 2.(b) is the result of these efforts.

Windows. Little need be said here in addition to the discussion in my earlier memoranda. The building was built with transparent windows, according to design. Even if the detention personnel were to conduct themselves in a manner considerably below the high standards of vigilance with which the jail is regularly maintained, the presence of the windows could present no reasonable risk of escape or importation of contraband. The action of the Sheriff in replacing all of such windows with solid sheets of steel, thus cutting off all view of the outside world, was overreaction akin to the chains and shackles example in footnote 20 to Justice Rehnquist's opinion.

The defendants have made some suggestion that retention of the sheets of steel is necessary in order to maintain proper operation of the air conditioning system. Any such conten-

tion is absurd. If the air conditioning system needs strengthening or other modification, such correction certainly can be made without the need to seal up the occupants in this manner.

Cell Searches. The conclusion that I must adhere to my prior order with respect to cell searches has given me some concern, because the opinion in *Bell v. Wolfish* held that a similar order was not constitutionally required. Certainly, this court is mindful of its duty to adhere, without question, to decisions of the Supreme Court. However, I believe that there are factors that significantly distinguish this case from *Bell v. Wolfish*.

As my memorandum of February 15, 1979, shows, I observed the alternative processes of unannounced cell shakedown under which the inmates were (Method C) and were not (Method A) allowed to observe the searches. Under Method C, and unlike the situation envisaged by the officials involved in *Bell v. Wolfish*, there is no opportunity for ". . . the inmates to attempt to frustrate the search by distracting personnel and moving contraband from one room to another ahead of the search team." (*See* 441 U.S. at 555).

Also, according to the opinion in *Bell v. Wolfish*, "[t]he Court of Appeals did not identify the constitutional provision on which it relied in invalidating the room-search rule" (*see* 441 U.S. at 556), and the District Court found a violation of the Fourth Amendment, which the Supreme Court ruled to have been in error (*see* 441 U.S. at 557). Having witnessed the comparative ease and institutional security and safety under which a prisoner can be allowed to observe the search of his cell, it seems to me that to refuse such observation is contrary to the Due Process Clause of the Fourteenth Amendment.

The possessions that a man is allowed to keep in his cell are meager, indeed, being limited to things like a few pic-

tures, magazines, cigarettes, candy bars, and perhaps an extra pair of socks. Nonetheless, these items are cherished by the inmates. Enforcement of regulations as to what may be maintained is left, in large measure, to the discretion of the officer conducting the search. My own limited observation, as is mentioned in my memorandum of February 15, 1979, revealed an instance upon which the opportunity for a prisoner to make a plea or an explanation on his own behalf resulted in saving his property from confiscation. It was obvious that this fact meant a good deal to him, and I believe that the incident justifies a significant generalization.

Due process, after all, means fair treatment under the circumstances. I believe that to allow these prized possessions to be confiscated under subjectively enforced regulations, without giving the possessor any opportunity to explain or protest or entreat, deprives him of his property without due process of law.

The Court of Appeals remanded this case because, in rendering my decision, I relied, in part, upon the belief that ". . . proof of the availability of less restrictive means demonstrated that prison officials had exaggerated their response to security concerns, and that *Wolfish* rejected such a mode of analysis." (*See* Court of Appeals Memorandum Decision of August 8, 1980, page 3). In giving reconsideration to this matter, I put aside altogether the now rejected doctrine and base my reaffirmance upon the other portions of my earlier memoranda and upon this memorandum, all of which I believe to be in harmony with *Bell v. Wolfish*.

DATED: May 18, 1981.

/s/ William P. Gray
WILLIAM P. GRAY
United States District Judge

B. Supplemental Memorandum Opinion and Judgment, Filed February 15, 1979.

United States District Court, Central District of California.

Dennis Rutherford, Harold Taylor, and Richard Orr, et al., Plaintiffs, v. Peter J. Pitchess, et al., Defendants. Case No. CV 75-4111-WPG.

On July 25, 1978, this court issued a Memorandum of Decision in which it concluded, from the evidence at trial, that specific corrective action would be required concerning certain conditions and policies at the Los Angeles County Central Jail. The Memorandum expressed a reluctance to impose specific requirements with regard to other conditions and policies without further consideration. For this reason, no order was issued, and additional evidentiary hearings were held, followed by further briefing.

In the meantime, the defendant Sheriff has adopted and has begun to implement, even without an order, most of the changes proposed by the court. Such action provides further manifestation of the good faith of the Sheriff and his principal assistants. They and their counsel, like the attorney for the plaintiffs, have displayed throughout this litigation a willingness to work out reasonable solutions to the problems involved in these proceedings. The attitude thus displayed by the jail authorities has been a strong reminder to the court that it should defer to the expertise of the "jailer" to all appropriate extent.

As stated in my earlier Memorandum, this court is aware that ". . . [t]he problem . . . in each of the issues here concerned is to determine the point at which the implementation of the goals of security and order and safety must be balanced by the need to preserve for the inmate all of the constitutional rights that the fact of his incarceration will permit." In resolving the remaining issues in this Memo-

randum, I have sought to apply the test of whether the challenged conditions or restrictions are reasonably necessary to the maintenance of security, order and safety in the institution, or whether they constitute an exaggerated response by the custodial officials to these considerations. This test was ably expounded in the case of *Feeley v. Sampson*, 570 F.2d 364 (1st Cir. 1978). Theoretically, it is less burdensome upon the custodial authority than the "strict scrutiny" standard, under which a state must justify every restriction imposed upon an inmate as being based upon a "compelling interest," and must show that there is no feasible "less restrictive alternative." *See, Campbell v. McGruder*, 580 F.2d 521 (D.C. Cir. 1978). However, at least for purposes of this case, applications of the two tests involve differences only as to starting points, and the results are substantially the same whichever path of analysis is followed. We are dealing with pre-trial detainees, men who have not been convicted and thus still are entitled to as much benefit from the presumption of innocence as may be accorded them, granted the need to confine them to insure their presence at trial. "Any restriction or condition that is not reasonably related to this sole stated purpose of confinement would deprive a detainee of liberty or property without due process, in contravention of the Fourteenth Amendment." *See, Campbell v. McGruder*, 580 F.2d 521, 528 (D.C. Cir. 1978), quoting from *Duran v. Elrod*, 542 F.2d 998, 999-1000 (7th Cir. 1976). Under such circumstances, if jail security and order can be protected by less restrictive means, the conditions and practices challenged here must be deemed unreasonable as an exaggerated response.

Hence, in undertaking to decide these remaining issues, the court is again confronted with the question of what is reasonable. This question involves consideration of, *inter*

alia: the constitutional rights of the inmates; the need to preserve security, order and safety in the jail; the understandable propensity of the Sheriff to favor the latter consideration when the two are not fully harmonious; and the duty of the court to give appropriate deference to the expertise of the Sheriff and still fulfill its above-mentioned constitutional responsibility.

Contact Visits. Testimony at the supplemental hearing reaffirmed the court's awareness of how important it is to a prisoner that he be able to have contact visits from time to time with persons that are emotionally close to him. Such testimony also demonstrated clearly the great burden that would be imposed upon the jail authorities and the public if such contact visits were to be accorded all or most of the five thousand prisoners at the jail. Expensive construction would be required in order to create a new, large and secure visiting area that would be insulated from the jail and from the outside by separate sally ports. The processing of visitors would have to include careful identification, sometimes including interviews, personal searches and the checking of hand-carried articles. Prisoners necessarily would be strip-searched upon leaving the visiting area. Substantially increased numbers of guards would be required for visual surveillance and supervision.

This complicated, expensive, and time-consuming process, coupled with the fact that contact visits are inherently more protracted than those that can be terminated simply by cutting off the telephones, inevitably would reduce far below the present level of two thousand per day the numbers of visits that could be accommodated.

A further problem that is of great concern to the jail authorities is the fact that the establishment of any program of contact visits does increase the importation of narcotics into a jail, despite all safeguards and precautions. The Sher-

iff also is concerned about the increased possibility of the introduction of weapons and of escape attempts with the taking of hostages.

From the foregoing summary, it is apparent that many factors strongly militate against the allowing of contact visits. Most of the pre-trial detainees remain at the jail only for a few days or weeks, and I cannot conclude that their hardship in being unable to embrace their loved ones for such a limited period of time renders unreasonable the unwillingness of the Sheriff to accommodate them in this respect. The impracticability of such accommodation is so great that this deprivation must be considered to be one of the inconveniences that necessarily stem from the need for incarceration.

However, the foregoing discussion does not solve the entire problem. In *Campbell v. McGruder*, 580 F.2d 521, 532 (D.C. Cir. 1978), Chief Judge Bazelon said, in writing the opinion for the court: "[T]he responsibilities of the jail increase as the period of the detainee's incarceration grows longer. Conditions that might be tolerable for ten days, might be unacceptable if imposed for a month or longer." I believe this statement to be pertinent here. Unfortunately, considerations of public safety make it necessary that some accused (but not yet convicted) defendants be obliged to remain in custody for many months pending trial. I have become convinced that in such instances the factors that make it impracticable to provide contact visits for large numbers of men with stays of short duration are much less compelling. On the contrary, I believe that if a man is incarcerated in the jail for more than a few weeks, principles of basic human decency require that all reasonable attempts be made to permit him to kiss his wife or his girlfriend and to hug his children once in a while during this long, difficult and inherently depressing period in his life.

By the time that a man has been held for a month, quite a bit is known about him, due to the investigative and classification process that has been conducted, and the opportunity to observe his day to day conduct. If contact visits were to be limited to men who have been in uninterrupted custody for a month or more and who are not determined to be drug oriented or escape risks, the number of prisoners eligible for such treatment would be reduced greatly, and by placing a maximum limit upon the total number of contact visits per week, the scope, burden and dangers of the program would be substantially diminished.

Such a curtailment in the number of contact visits would mean that the massive construction that would be required in order to facilitate such visits for the entire jail population could be avoided. Modest alteration within the jail presumably could provide appropriate space, or the Sheriff might choose to establish a facility for such visits outside the jail and transport the inmates back and forth.

An order will be issued requiring the defendants to make available a contact visit once each week to each pre-trial detainee that has been held at the jail for one month or more and concerning whom there is no indication of drug or escape propensities; provided, however, that no more than fifteen hundred such visits need be allowed in any one week. In the event that the number of requested visits in any week exceeds fifteen hundred, or such higher number as the Sheriff voluntarily undertakes to accommodate, a reasonable system of rotation or other priorities may be maintained. The lengths of such visits shall remain in the discretion of the Sheriff.

Rooftop Recreation. In my earlier Memorandum, I expressed the lament that the defendants have ". . . substantially ruined [the roof] as a place for basketball and other team sports by installing upright lengths of steel pipe every

twenty-seven feet throughout the floor surface." Counsel for the defendants, in his brief, referred to such comment as an instance in which "The Court has wandered off on a lark of its own . . . ." Upon further reflection, I am forced to the conclusion that counsel is right and that no corrective order is appropriate. I am still convinced that "[i]f the jail authorities were to put their minds to the matter, . . . they would find ways to remove all or most of those posts that so seriously diminish the adequacy of the roof for physical exercise, and still keep the escape and assault risks under reasonable control." However, I suppose that whether the roof conditions permit the inmates to play full-court basketball or unnecessarily restrict them to "half-court" is a matter that does not rise to constitutional dimensions.

Restoration Of Windows. Evidence at the supplemental hearing has in no sense altered my conviction that the windows must be restored in the original portion of the jail. The right of the inmates not to be deprived of all view of the outside world far outweighs the inferred danger of serious escape attempts or contraband importation through holes that might be made in the "unbreakable" glass available for installation.

From the testimony at the supplemental hearing, it appears that an agile inmate wielding a heavy metal instrument could break the best available glass by giving it from thirty to forty heavy blows. The noise created by such activity would reach a decibel count of between 100 and 120, which is roughly equivalent to the sound of a nearby jet aircraft beginning its takeoff.

Alternatively, an inmate with a propane torch, or a cell-made substitute therefor, could penetrate the best "security proof" glass and, in about four to eight minutes, make a hold large enough for a person to squeeze through. A by-product of such effort would be a large quantity of black

pungent smoke.

Beyond doubt, the jail is ably administered, a fact that militates heavily against an inmate having access to an iron bar or a torch. It also seems reasonable to assume that the noise or the smoke created by any such benighted venture would attract the attention of an alert guard well before a significant breach could be accomplished. Also, if a hole were to be made in a window, I have no doubt whatever of the resourcefulness of the jail authorities in being able to prevent narcotics or other contraband from being passed through the opening pending permanent restoration.

The replacing of the windows with sheet steel clearly was an exaggerated response to a remote danger and was in derogation of the legitimate interests of the detainees. The windows must be restored promptly.

Cell Searches. In my earlier Memorandum, I expressed the conclusion that ". . . shakedowns should be made while the respective inmates remain outside their cells but near enough to observe the process and raise or answer any relevant inquiry." This conclusion now is reaffirmed, particularly in light of the subsequent demonstration of four alternative methods of cell search presented by the Sheriff. Method A involved searching all of the cells in a row while the inmates remained in the day room, which is the manner in which searches currently are conducted. In Method C, the men occupying a particular cell were brought from the day room and stood outside their cell while it was being searched. When such search was completed, the men were locked in their cell and the remaining cells were searched successively in the same manner. Methods B and D are so unsatisfactory and expensive that no further comment concerning them is indicated.

According to the statistics reported by the defendants, Methods A and C take substantially the same amount of

time, and C is slightly more expensive, due to the need to utilize a few more deputies to escort the prisoners and to insure against assault upon the deputies that are engaged in searching the cell.

At the invitation of counsel for the defendants, I asked two "experienced" inmates whose cell was being searched which method they preferred. The ready responses were that they preferred to be present so that they could see what was going on, and in order that they might seek to explain why certain questioned items should not be removed. Coincidentally, while I was watching the search of that very cell, one of the deputies started to remove a magazine as not being sufficiently current and thus in violation of regulations designed to minimize fire danger by preventing accumulation of old periodicals. Upon being asked to reconsider, the deputy found that it was not as old as he had thought and left it. The same deputy started to discard another magazine on the ground that it lacked a cover. The inmate urged him to riffle the pages a bit; he did; the cover thereupon appeared; and the magazine stayed in the cell.

These are small matters; but they are important to the detainees, and their legitimate interests in protecting their meager possessions outweigh the small increase in the burden upon the defendants.

Implementing Judgment. I believe that my Memorandum of July 25, 1978, and this Memorandum cover all of the matters concerning which affirmative action is deemed by the court to be required. A judgment containing such orders will be filed contemporaneously herewith. In all other respects, I find that the issues raised by the plaintiffs (apart from the medical issues, which are involved in separate pending proceedings) do not merit court intervention at this time.

This Memorandum and the Memorandum of July 25, 1978, shall constitute findings of fact and conclusions of law, as provided in Rule 52(a) of the Federal Rules of Civil Procedure.

DATED: February 15, 1979.

/s/ William P. Gray
WILLIAM P. GRAY
United States District Judge

Judgment.

United States District Court, Central District of California.

Dennis Rutherford, Harold Taylor, and Richard Orr, et al., Plaintiffs, v. Peter J. Pitchess, et al., Defendants. Case No. CV 75-4111-WPG.

Filed Feb. 15, 1979.

In this action, the plaintiffs, on behalf of inmates of the Los Angeles County Central Jail, challenge certain policies and practices of the defendant administrators of the jail and the living conditions under which the inmates are maintained. The matter has been tried and briefed, and the court has made findings of fact and conclusions of law in the form of a Memorandum of Decision filed on July 25, 1978, and a Supplemental Memorandum of Decision that is being filed contemporaneously herewith. In accordance with such findings, the court renders this judgment.

IT IS ORDERED AS FOLLOWS:

1. *Beds.* Every prisoner kept overnight in the jail will be accorded a mattress and a bed or bunk upon which to sleep.

This order shall not preclude the defendants from permitting inmates to be housed with full bedding but without a bunk, for one night only, if, in the defendants' judgment, such inmate or inmates require more secure housing than is

provided in the available areas and the appropriate housing does not have a sufficient number of bunks. Further, this order shall not apply in the event of an emergency causing a sudden and unusual intake of prisoners, in which case full bedding shall be provided and the defendants will exercise their best efforts to provide bunks for all inmates as soon as possible.

2. *Visitation.*

(a) *Visits By Children Of Prisoners.* Upon prior request from a prisoner, his minor children over the age of twelve (12) years shall be permitted to visit him unaccompanied by an adult.

(b) *Contact Visits.* Commencing not more than ninety days following the date of this order, the defendants will make available a contact visit once each week to each pretrial detainee that has been held in the jail for one month or more, and concerning whom there is no indication of drug or escape propensities; provided, however, that no more than fifteen hundred such visits need be allowed in any one week. In the event that the number of requested visits in any week exceeds fifteen hundred, or such higher number as the Sheriff voluntarily undertakes to accommodate, a reasonable system of rotation or other priorities may be maintained. The lengths of such visits shall remain in the discretion of the Sheriff.

3. *Outdoor Recreation.* All prisoners except those that are hospitalized, in disciplinary segregation, those under the jurisdiction of the medical staff of the Forensic Mental Health Unit who such medical staff determine are inappropriate for roof recreation, and except for those high security inmates who the Sheriff believes cannot safely be permitted roof recreation shall be allowed not less than two and one-half hours of outdoor exercise or other recreation per week.

Within sixty days following the date of this order, the Sheriff shall report to the court the number of inmates under the jurisdiction of the Forensic Mental Health Unit and the number of high security inmates included in the roof recreation program and the nature of alternative recreation provided for high security inmates not allowed roof recreation.

4. *Indoor Recreation.* Television receiving sets shall be installed and reasonably maintained in each day room.

5. *Restoration Of Windows.* Within ninety days following the filing of this order, transparent windows shall be restored in each portion of the jail from which they previously have been removed.

6. *Processing For Court.* As soon as practical, but not more than four months from the date of this order.

(a) each detainee placed in a holding cell will be given a chair or a bench upon which to sit;

(b) on each day of trial after the first day a detainee will not be required to leave his bed earlier than 6:00 A.M., and will not be confined in a holding cell for longer than thirty minutes, either before leaving for court or following his return; and his waiting time on a bus at the jail will not exceed thirty minutes; and he will be returned to his cell not later than 8:00 P.M.

Within four months from the date of this order, the Sheriff shall report his progress in this regard to the court and the reasons, if any, for his inability to comply in all respects. At that time, the court will review this portion of this order as to whether there is any justification for modification thereof.

7. *Telephones.* On January 5, 1979, a separate order was filed approving and directing implementation of a plan for the improvement of telephone facilities in the jail. Accordingly, no further order is indicated on this subject at

this time.

8. *Cell Searches.* Inmates that are in the general area when a "shakedown" inspection of their cells is undertaken shall be permitted to be sufficiently proximate to their respective cells that they may observe the process and respond to such questions or make such requests as circumstances may indicate.

9. *Time For Meals.* An inmate shall be allowed not less than fifteen minutes within which time to complete each meal.

10. *Change Of Clothing.* Effective not more than sixty days following the filing of this order, each inmate shall receive at least twice each week clean outer garments, undergarments, socks and a towel in exchange for those that he has been using.

11. *Injunctive Relief.* When any inmate has information that he believes to disclose a violation of this order, he may set forth that information in writing to the Commander of the jail who shall cause an investigation thereof to be made as soon as reasonably practicable, and in any event within ten days following receipt of such written statement. Promptly following the completion of the investigation the Commander shall deliver a written reply to the inmate indicating the results thereof and what, if any, action has been taken concerning the inmate's complaint and what, if any, action has been taken to prevent violations of this judgment. Absent unusual circumstances indicating compelling reasons why following this procedure would result in substantial prejudice to the inmate, no petition for a judgment of contempt for violation of this order shall be entertained by the court until the inmate first complies with this administrative procedure. In considering any petition for contempt for violation of this order, the court shall take

into account the appropriateness of any action taken by the jail Commander in response to information provided him in accordance with this procedure.

12. *Emergencies.* In the event that the Sheriff or his authorized representatives have reasonable cause to believe that there exist facts showing a serious imminent threat to the security of the jail or the safety of any persons therein that would occur if any of the provisions of this decision were enforced and there is insufficient time to seek a formal modification or exception to such provisions, the Sheriff may temporarily suspend such of the provisions of this decision as may be necessary to overcome or reduce such threat for a period not exceeding five court days, provided he submits a statement in writing to this court setting forth what he has done and why he has done it.

13. *Posting Of This Judgment.* The defendants and their successors in interest shall cause this judgment to be posted permanently and conspicuously in each prisoner housing area in the jail for the period of one year; thereafter, the defendants and their successors in interest shall permanently and conspicuously post this judgment in each of the jail's law libraries.

14. Counsel for the plaintiffs shall recover his costs incurred in this action.

DATED: February 15, 1979.

/s/ William P. Gray
WILLIAM P. GRAY
United States District Judge

C. Reported Memorandum Opinion, 457 F.Supp. 104 (C.D. Cal. 1978).

United States District Court, Central District of California.

Dennis Rutherford, Harold Taylor, and Richard Orr, et al., Plaintiffs, v. Peter J. Pitchess, et al., Defendants. Case

No. CV 75-41111-WPG.

Filed July 25, 1978.

This action seeks injunctive and declaratory relief, on constitutional grounds under 42 U.S.C. § 1983, against certain practices and conditions of confinement at the Los Angeles County Central Jail (the "jail"). The court previously has established the plaintiff class as consisting of all prisoners in the jail since December 31, 1975. The court finds that the class is so numerous that joinder is impracticable; that the questions of law and fact and the claims presented by the class representatives are common to the class; and that the outstandingly competent representation provided the named plaintiffs by Terry Smerling, Esq., of the ACLU Foundation of Southern California, will adequately protect the interests of the class as a whole.

The defendants are the Sheriff of Los Angeles County, some of his subordinates that are concerned with the administration of the jail, and the members of the County Board of Supervisors.

Trial of this case involved about seventeen days of testimony, the receipt of many exhibits, and the submission of thoroughly prepared pre-trial and post-trial briefs. In addition, with the prior agreement of counsel, the court made unannounced visits to the jail on September 23, 1977, and June 12, 1978.

The plaintiffs have challenged the constitutionality of many aspects of the housing and treatment of inmates at the jail. In this memorandum, I shall undertake to resolve these issues, bearing in mind, as best I can, the dilemma that confronts every federal judge before whom a case such as this is litigated. On the one hand, we are reminded that ". . . courts are ill equipped to deal with the increasingly urgent problems of prison [and presumably "jail"] admin-

istration and reform", *Procunier v. Martinez*, 416 U.S. 396, 405 (1974), and that considerations of institutional security should be left to the expertise of state correctional officials unless they "have exaggerated their response to these considerations." *Pell v. Procunier*, 417 U.S. 817, 827 (1974).

On the other hand, these same decisions go on to state that "[c]ourts cannot, of course, abdicate their constitutional responsibility to delineate and protect fundamental liberties." *Pell v. Procunier*, 417 U.S. at 827, and that:

> ". . . a policy of judicial restraint cannot encompass any failure to take cognizance of valid constitutional claims whether arising in a federal or state institution. When a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights." *Procunier v. Martinez*, 416 U.S. at 405 (1974).

Every inmate in a penal institution, by the very fact of his incarceration, necessarily is deprived of some of the constitutional rights that otherwise would be his to enjoy. *Price v. Johnston*, 334 U.S. 266, 285 (1948). But he retains those rights ". . . that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." *Pell v. Procunier*, 417 U.S. at 822. Of course, institutional security and order and the physical safety of jail personnel and inmates are necessarily paramount objectives of any jail administrator. If those were the only considerations, there would be no occasion for a court to "second guess" the expertise of the Sheriff in pursuing such objectives. The problem, then, in each of the issues here concerned is to determine the point at which the implementation of the goals of security and order and safety must be balanced by the need to preserve for the inmate all of the constitutional rights that the fact of his incarceration

will permit.

Issues of this nature have been brought to federal courts with increasing frequency during the past several years, and the task of accomplishing this balancing process is always difficult. Most courts are sympathetically mindful of the problems of the "jailer" and desire to defer to his experience and expertise to all appropriate extent. On the other hand, as Judge Frankel said in *United States ex rel Wolfish, et al., v. Levi*, 439 F. Supp. 114, 141 (S.D. N.Y. 1977), ". . . the court is not free to blink away the common awareness that zeal for security is among the most common varieties of official excess."

So, in considering whether a prisoner is being denied his due process rights under the Fifth or Fourteenth Amendments, his First Amendment rights, or the right, accorded by the Eighth Amendment, to be free of conditions that constitute cruel and unusual punishment, the courts must seek to determine what is reasonable under the circumstances at hand. In *Rochin v. California*, 342 U.S. 165, 170 (1952), Justice Frankfurter delivered a wise admonition to courts engaged in making these determinations:

> "The vague contours of the Due Process Clause do not leave judges at large. We may not draw on our merely personal and private notions and disregard the limits that bind judges in their judicial function. Even though the concept of due process of law is not final and fixed, these limits are derived from considerations that are fused in the whole nature of our judicial process."

Accordingly, I have sought to determine the issues here presented in light of the body of law that has developed by the decisions of other courts confronted with similar problems. In doing so, I have been impressed by Chief Justice Warren's observation in *Trop v. Dulles*, 356 U.S. 86, 100-

101 (1958), that ". . . the words of the [Eighth] Amendment are not precise, and that their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." I hope also to take heed of an equally pertinent comment by Justice (then Judge) Blackmum that in considering problems of the type here concerned, ". . . broad and idealistic concepts of dignity, civilized standards, humanity, and decency are useful and usable." *Jackson v. Bishop*, 404 F.2d 571, 579 (8th Cir. 1968).

One further consideration must be taken into account. Most of the inmates at the jail are pre-trial prisoners. They are there, not to receive punishment for their misdeeds, for their guilt has not yet been established. They are there because it has been deemed necessary to incarcerate them to insure their presence at trial. Thus, they are entitled to the least restrictive alternatives consistent with the purpose of their incarceration. *Brenneman v. Madigan*, 343 F. Supp. 128, 138 (N.D. Cal. 1972).

We now deal with the specific complaints.

Inadequacy of Cell Space. The jail normally confines more than five thousand inmates, a majority of whom occupy cells designed to hold four, six or eight men. The plaintiffs complain that these cells are so impermissibly small that they contain less than 25 square feet of floor space for each man, and that the larger part of this space is taken up by the bunks and toilet. The plaintiffs point out that such cell space is far less than the 40 square feet per inmate prescribed as a minimum by the California Minimum Jail Standards, 15 Cal. Adm. Code § 1081(d), and that several published judicial opinions have considered comparable, or even larger, space to be constitutionally inadequate. *See, e.g., Detainees of Brooklyn H. of Det. for Men v. Malcolm*, 520 F.2d 392, 398 (2d Cir. 1975) (20 square

feet); *Moore v. Janing*, 427 F. Supp. 567, 572 (D. Neb. 1976) (20 square feet); *Inmates of Suffolk County Jail v. Eisenstadt*, 360 F. Supp. 676, 679 (D. Mass. 1973); *aff'd on other grounds*, 494 F.2d 1196 (1st Cir. 1974), *cert denied* 419 U.S. 977 (1974); *aff'd on other grounds*, 518 F.2d 1241 (1st Cir. 1975) (44 square feet). In *Gates v. Collier*, 390 F. Supp. 482, 486 (N.D. Miss. 1975), *aff'd on other grounds*, 525 F.2d 965 (5th Cir. 1976), Chief Judge Keady stated that "[w]e know from the undisputed evidence that generally accepted correctional standards require a minimum of 50 square feet of living area for each prison inmate."

Both from the testimony at the trial and from my personal inspection of the cell rows in the course of the September 23, 1977 visit, it is apparent to the court that the multiple occupancy cells in both the "old" and new sections of the jail and the general atmosphere in which they are located present poor examples of the civilized standards and concepts of dignity, humanity and decency to which Justice Blackmun made reference in *Jackson v. Bishop, supra*. The cells are much like those in the Hall of Justice Jail, as I pointed out in *Dillard v. Pitchess*, 399 F. Supp. 1225, 1231 (C.D. Cal. 1975), a case in which the living conditions there were held to be intolerable. However, the opinion in that decision made a significant comparison. Hall of Justice inmates were confined in their cells almost constantly. By contrast,

> ". . . inmates at the Central Jail have several advantages not available to Hall of Justice prisoners, the most important of which are that they take their meals in a dining room and have daily use of shower rooms located at the ends of the cell modules. Also, one of several day rooms is frequently available to Central Jail prisoners, where they may sit at tables and play games or write or talk. A chapel that will accommodate

several hundred inmates is used for the presentation of occasional shows or musical entertainment, as well as regular church services."

The cells of the Central Jail are, indeed, small, but in view of the frequent and substantial periods of time that the inmates are allowed to be out of their cells, I am not able to conclude that the matter of the limited number of square feet of sleeping space per man presents a constitutional issue that requires immediate action. Matters discussed later in this memorandum present problems that may require substantial modifications in the system of allocating prisoners among the penal facilities of Los Angeles County. It is expected that any such adjustment ". . . will take into appropriate account the increasingly enlightened standards with respect to the living space that should be accorded each inmate." *See, Stewart v. Gates*, ___ F. Supp. ___, ___ (C.D. Cal. 1978).

The evidence at the trial disclosed the fact that from time to time a particular module becomes so crowded that there are more inmates than bunks. As a result, the "overflow" men are obliged to sleep on mattresses on the concrete floor of the cell or of the walkway that fronts a row of cells. As was indicated earlier in open court, I find this to be intolerable. "If the public, through its judicial and penal system, finds it necessary to incarcerate a person, basic concepts of decency, as well as reasonable respect for constitutional rights, require that he be provided a bed." *Stewart v. Gates, supra*, at page ___. An order to such effect will be included in the judgment that will implement this memorandum.

Visitation. The plaintiffs complain that an inmate at the jail is separated from his visitor by a transparent glass partition and must use a "telephone" for voice communication. The defendants respond by emphasizing that to permit contact visits would increase the risks of physical harm, escape

and importation of drugs and other contraband. They point out that the measures that would have to be taken to guard against such risks, including strip searches and greatly increased supervision, would make it impossible for the jail to accommodate the more than two thousand visits per day that are now being accorded.

It is evident that to allow unrestricted contact visitation would add greatly to the Sheriff's security problems and reduce the numbers of allowable visits. On the other hand, it is equally obvious that the ability of a man to embrace his wife and his children from time to time during the weeks or months while he is awaiting trial is a matter of great importance to him. The problem that confronts us here was well expressed by Judge Lasker in *Rhem v. Malcolm*, 371 F. Supp. 594, 605 (S.D. N.Y. 1974); *aff'd* 507 F.2d 333 (2d Cir. 1974);

> "There can be no doubt that the necessity of assuring security must be balanced against the right to humane treatment of prisoners, and that if contact visits are incompatible with that need they must be sacrificed. The critical question is whether the two can coexist."

It seems to me that a reasonable balance can be struck between these two valid considerations of security and prisoners' rights. Under the classification process that the Sheriff has established and is now implementing, within two weeks after an inmate arrives at the jail, the staff has learned enough about him to make a tentative evaluation as to whether he presents a security threat from the standpoints of being escape prone or drug oriented or otherwise, and he is classified accordingly. It is my understanding that a substantial proportion of the inmates are given a low risk classification in these respects. As to them, the dangers to security would appear not to be sufficient to justify depriving them of all physical contact with their loved ones, bearing in mind the

supervision and post-visit searches that the custodial staff would administer.

In order that the additional processing not overburden the prison staff and thus curtail the total number of visits that it could reasonably handle, a qualified inmate might be limited in the number of contact visits that he might receive. At the outset, one visit per week might be appropriate, subject to modification in light of experience.

The evidence at trial indicated that most of the inmates remain at the jail less than one week. By restricting the contact visits to those who have been in the jail for two weeks and have received other than a high risk classification, and by imposing limits upon the frequency of their visits, it would appear that the numbers of such visits would be reasonably manageable.

Counsel for the defendants has advised that Biscailuz Center probably will be fully reactivated shortly as a place of pretrial detention. In such event, it is assumed that it will house a substantial number of low risk inmates that otherwise would be kept in the Central Jail. If this occurs, it will further ease the problem of according contact visits in the Central Jail, and the court would expect that this type of visitation would be established at Biscailuz Center.

This court is hopeful that the above described tentative proposal can enhance considerably the goal of treating the inmates with reasonable humanity without unduly increasing the problems of security. Any order implementing these comments concerning the allowance of contact visits will be withheld pending a further opportunity for the parties to express their views and suggestions. A hearing for that purpose will be scheduled shortly after the filing of this memorandum.

Under the present arrangement, 228 visitors are accommodated at one time in separate "telephone" cubicles and

are allowed to remain twenty minutes. The defendants point out that the visiting facilities are in use twelve hours per day throughout the week; that 63,000 visitors are accommodated each month; and that logistical problems necessitate the twenty-minute limitation in order to accommodate the large numbers of weekly visits that are desired. The plaintiffs urge that this is too short a time and they seek to show that hour long visits could be accomplished without reducing the numbers of people that could be served.

It is evident that the Sheriff and his staff fully recognize the value of visitation, and they are to be commended for the attention and effort that they devote to accommodating such a large number of people. I am unable to conclude that whether individual visitors should stay only twenty minutes or could be allowed more time raises a constitutional issue that requires the court to second guess the Sheriff in this matter.

Under present regulations, individuals under eighteen years of age are not admitted to the jail to visit an inmate unless they are accompanied by an adult. This means that a teenage person that is fully capable of coming to the jail alone would be unable to visit his or her father unless the mother or some other friend would be available to come along, a situation that, unfortunately, is not always the case. The reluctance of the Sheriff to open the jail to unaccompanied visits by children under any and all circumstances is understandable. Nonetheless, inmates should be permitted, upon prior request, to receive unaccompanied visits from their minor children.

Outdoor Recreation. Except for the corridors, or freeways, that front the rows of cells, the only areas available for physical exercise are portions of the roof of both the original jail and the new addition. Under schedules worked out by custodial personnel, prisoners are allowed two and

one-half hours per week, at most, for recreation on the roof, in groups of about 130. This is considerably less than the daily outdoor exercise of one hour that several federal courts have required as a minimum. *See, e.g., Mitchell v. Untreiner*, 421 F. Supp. 886, 901 (N.D. Fla. 1976); *Campbell v. McGruder*, 416 F. Supp. 100, 105 (D. D.C. 1975); *Conklin v. Hancock*, 334 F. Supp. 1119, 1122 (D. N.H. 1971).

Neither citation of legal authorities nor testimony of experts is needed in order to convince this court of the importance of regular outdoor exercise to the physical health and emotional well being of the men (particularly the young men) that make up the jail population. Clearly, they should have at least an hour for such purpose each day. The defendants do not challenge this. However, they understandably point out that the limited size of the rooftop areas available, the succession of complex routines that occur within the jail each day, and the logistical problems of controlling and moving large numbers of prisoners back and forth to the roof, limit substantially the opportunity for outdoor recreation.

The rooftop program was newly inaugurated at the time of trial, and the jail officials have had insufficient opportunity to assess the extent to which it reasonably can be expanded. Under all of the circumstances, including the defendants' apparent good faith desire to provide for adequate recreation, I am of the view that one hour per day should be considered a goal, rather than a constitutionally mandated minimum. The court will retain jurisdiction in order to assess the progress toward such goal. In the meantime, all prisoners, including those considered "high power" and those in administrative segregation, must be allowed not less than two and one-half hours of roof recreation per week.

The roof of the new portion of the jail provides a reasonably large open expanse. But the defendants have substantially ruined it as a place for basketball and other team sports by installing upright lengths of steel pipe every twenty-seven feet throughout the floor surface. These uprights support steel "eye-beams" that, along with the eighteen feet high perimeter wall, support the heavy wire screen that covers the entire area. The top of the wall on two sides is about eighty feet above the ground that abuts it; on the third side the roof of the Inmate Reception Center is about thirty feet below the top of the wall.

Custodial personnel assert that the screen is necessary in order to counteract the risk of someone from the outside throwing a weapon over the wall and into the recreation area, and to prevent escape over the wall with the aid of a jail-made "grappling hook" and line or a suddenly formed human pyramid.

Here is one instance in which it seems to me that the concern for security has resulted in an exaggerated response. If the jail authorities were to put their minds to the matter, I am sure that they could find ways to remove all or most of those posts that so seriously diminish the adequacy of the roof for physical exercise, and still keep the escape and assault risks under reasonable control. Such study and consequent readjustment will be required.

Indoor Recreation. The plaintiffs complain that inmates are allowed insufficient time to use the day rooms or to "stretch their legs" by walking back and forth along the walkways ("freeways") that extend across the front of each row of cells. The defendants refer to a new program that began at about the time of trial under which all inmates, other than those of maximum security classification, have considerably increased use of the day rooms and freeways. Maximum security inmates are given access to the freeway

on a limited basis. Inasmuch as they are considered generally to be assault prone, they are not allowed in the day rooms and are escorted whenever they must be in areas where other people are present. The defendants appear to be heading voluntarily and appropriately in the direction of allowing as much day room and freeway time as scheduling problems and reasonable security considerations will allow. Therefore, no order in this respect is presently indicated.

The day rooms once had television sets, but as they became inoperative because of internal malfunction or vandalism they were removed and not restored. Without implying any endorsement of the quality of most of the daytime television programs, it is obvious that people that are confined derive considerable recreational value from them. The jail authorities have agreed to reestablish television in the day rooms promptly. They should do so.

The plaintiffs complain of unconstitutional discrimination because inmates that agree to work, and thus become trustees, are given more privileges than are other prisoners. They may enter and leave their cells at will, have virtually unrestricted access to a day room and many other areas of the jail, and may attend weekly movies. I do not find such discrimination improper. Many menial chores must be performed regularly if the jail is to operate. In order to induce inmates to work at these tasks, the Sheriff is entitled to "hold out the carrot" of certain privileges that from a practical standpoint could not, or constitutionally need not, be accorded the general jail population. This is all that has occurred here.

Windows. A prisoner does not catch even a glimpse of the outside world throughout his entire time of confinement in the jail, other than the portion of the sky that he can see during his limited recreational periods on the roof. Thus, a man may go for many months without even seeing a bush

or a tree or any human activity outside the jail. This was not always so. When the building was constructed, in about 1963, it contained perimeter windows of transparent "unbreakable" glass. Thus, prisoners in the exterior cells or mess halls or day rooms had a bit of sunlight and outside view. However, within a short period of time, inmates succeeded in destroying several of these "unbreakable" windows, either through vandalism or in fruitless escape attempts. The defendants responded by replacing all of the windows with solid sheets of steel.

In *Rhem v. Malcolm*, 432 F. Supp. 769, 778 (S.D. N.Y. 1977), Judge Lasker held that to confine inmates so that they cannot see "the sun, sky or outside world" is a constitutional deprivation. This court agrees. Of course, as is recognized at the outset of this memorandum, constitutional rights must be limited by the reasonable requirements of security. But the conclusion is inescapable that this is another example of the response being more extreme than the danger against which it was directed.

Based upon visual observation, the lowest bank of windows is about twenty feet above the ground, and those of the next floor are about ten feet higher. In parts of the jail, the windows are immediately accessible to a person standing on the floor. In other places, they are much harder to reach. For example, along the upper tiers of the cells, a person would need considerable agility, dexterity and time in order to traverse the four-foot wide and very deep gap between the walkway and the wall in which the windows are set, maintain himself in a position to try to break a window, succeed in such attempt, and get through the opening.

I do not claim expertise in assessing the extent of the ingenuity of a prisoner determined to try to escape, nor am I aware of all of the appropriate means of frustrating such attempts. But when consideration is given to the vigilance

and care with which inmates are watched and supervised, the heights of the windows above the ground, the possibility of satisfactory fire resistant unbreakable glass being available,* and, in any event, the ability to bar and/or screen windows, this court is simply unable to conclude that the need to guard against occasional benighted escape attempts warrants depriving all inmates of any view of the outside world. To liken the jail, in its present condition, to one of those infamous dungeons of medieval days would be unfair, because the jail is well ventilated and reasonably well lighted. But the action in sealing up the place was a step in the wrong direction.

Processing For Court. On each court day, between 700 and 1,000 inmates are transported by bus to twenty-six courts scattered throughout the broad expanse of Los Angeles County. These prisoners are awakened at about 4:20 a.m., and, after being given breakfast, they are escorted to the Inmate Reception Center located in the same building complex as is the jail. Most of the men arrive there at about 5:30 a.m. and are distributed promptly among the more than thirty holding cells, each of which holds inmates bound for a particular court.

The holding cells are about fourteen feet by fourteen feet in linear dimension, and the only furnishing is a toilet. The early arrivals in the cell are able to lie or sit on the concrete floor, but as more men are added this becomes increasingly difficult and finally impossible. On the morning of my visit, I counted about twenty-eight men in several of the cells, a condition of "standing room only." One cell, number 21, became jammed with so many occupants that I could not

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*Witnesses for the defendants insisted that such glass does not exist, but I am not convinced as to the completeness of the search or the enthusiasm with which it was made.

count them. Finally, one of the deputies came and directed that about one-half of the men move to an adjacent cell that had been cleared. Twenty-two men responded to that order, and thereafter I was able to count at least thirty-two remaining occupants. The place still was excessively crowded.

The men remain in the holding cell for about an hour, and then, at about 6:15 a.m., the chaining process begins. The inmates from a particular holding cell form a line in the adjacent corridor. There they are handcuffed, and then the handcuffs of each four men are connected with a chain. The line thereupon moves gradually to the nearby parking lot and the men board the bus in such manner that two men of each group of four are seated immediately in front of the other two, with the connecting chain passing over the back of the seat that separates them. A little more than an hour after the start of the boarding process, the buses begin to roll, and the time of the ensuing trip ranges from a few minutes to more than an hour, depending upon the destination and traffic conditions.

At the end of the court day, between 4:00 and 7:00 p.m. (sometimes much earlier), the reverse process begins. After the return bus ride, a shakedown examination, another substantial wait in a holding cell, and the evening meal, the men finally are returned to their cells, usually by about 8:00 p.m., but sometimes considerably later.

Any procedure involving the transportation to court of a group of detainees that present varied security risks is necessarily a demeaning experience for the prisoners. This is one of the regrettable but unavoidable consequences of the need for pre-trial detention. But, bearing this in mind, I find the above described process to be constitutionally intolerable in two respects.

The first glaring problem is the holding cells. The sight of from twenty to fifty-four men being crammed into a

fourteen-foot cell is a repelling experience in any society that takes pride in its high concepts of human dignity. The closest comparison that I can draw to such a spectacle is that of an overcrowded pig pen. If the defendants find it necessary to detain an inmate in a holding cell before placing him on a bus, or after his return, they must at least give him a place to sit on a bench or a chair.

This requirement clearly will create a difficult problem for the defendants, as well as for the court. It is obvious that the forthcoming order will reduce greatly the numbers of men that the present holding cells can contain, and it is doubtful that the Inmate Reception Center, as presently constructed, has space available for additional cells. On the one hand, considerations of constitutional rights and basic decency require that these dehumanizing conditions of holding cell detention be changed immediately. On the other hand, the Sheriff has been ordered by competent judicial authority (both state and federal) to move large numbers of prisoners back and forth to the various courts every day, and I cannot reasonably stop the present process in its tracks. The defendants must be given a minimum reasonable time within which to propose a solution that will make prisoners available to the courts and still treat them as human beings.

The second constitutional problem perceived in the present system for getting inmates to court is even more difficult. For a man to be subjected to the above described process that begins at 4:20 a.m. and ends at 8:00 p.m., or later, is inherently an exhausting and emotionally draining experience. To go through it once is bad enough; but to be obliged to repeat it for several successive days, or even weeks, while he is a defendant on trial, is believed to be constitutionally intolerable. Due process can hardly be accorded a defendant that is so worn out by the above described procedure that he lacks the alertness to help his attorney or to try to "put

his best foot forward" in the presence of the trier of fact. The defendants in this case will be required to modify substantially the present procedure in order to avoid subjecting inmates on trial to such daily trauma.

It is true that most of the inmates go to court in custody only once or twice, because their cases are dismissed, or non-custodial sentences are imposed, or they are granted bail, or they plead guilty and are returned to court only for sentencing. But it is largely the fact that the Sheriff must transport so many men such long distances one or two times that makes it difficult for him to deal more reasonably with the prisoners that are undergoing trial.

As is indicated earlier in this memorandum, to be subjected even once or twice to the present process of busing large numbers of prisoners back and forth to outlying courts is emotionally draining and dehumanizing. Nonetheless, defendants in custody must be brought before the court, and if this is the only reasonable procedure, with respect to prisoners not then undergoing trial, it scarcely can be challenged as unconstitutional. But the inherent need to haul so many men so far for purposes other than trial is far from evident, and if a reasonable and more humane alternative is available, the constitutional rights of the inmates entitle them to it.

On the morning that I was present to view the process, thirty-two large and obviously very expensive six-wheel buses, each controlled by two deputy sheriffs and filled with inmates, left the parking lot. From casual conversation, it appeared evident that most of these men were scheduled for arraignment or for other purposes not requiring the presence of witnesses. It is not readily apparent why all judicial processes involving defendants in custody, other than trial and sentencing after trial, could not be performed in court-

rooms constructed within, or immediately adjacent to, the Central Jail.* To the extent that locally assigned judges could not properly handle such calendars, it would be far less expensive and cumbersome for the Sheriff to transport one or more judges from an outlying courthouse to the jail than to bus a large number of prisoners to any such outlying court. One possibility worth considering is to establish and operate a system of closed circuit television as a means of conducting non-trial judicial procedures. This alternative would appear to be less expensive and far less arduous than busing many hundreds of prisoners all over the county every day. And, finally, if the governmental bodies of Los Angeles County remain determined that all phases of the criminal process shall continue to be handled in the outlying areas, they will be obliged to house their prisoners much closer to the respective courthouses.

Once the large "non-trial" proportion of inmates that make up the laborious collection and distribution program are eliminated therefrom, the court days can begin for prisoners currently on trial at a much more reasonable hour; the use of holding cells can be substantially reduced or perhaps even eliminated; and most of the large and expensive buses would not be needed. A reasonable time will be accorded the defendants within which to propose plans that will permit the processing of detainees going to court in a manner more closely in harmony with that in which a civilized society should deal with its prisoners.

However, as a matter of due process, no such delay can be tolerated with respect to inmates currently on trial. Beginning forthwith, on each day of trial after the first day, such inmates will be required to leave their beds not earlier

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*A large unoccupied portion of one floor apparently could provide space for several modest courtrooms.

than 6:00 a.m.; they will not be confined in holding cells, either before leaving for court or following their return; their waiting time on the buses at the jail will not exceed thirty minutes; and they will be returned to their cells no later than 8:00 p.m. An order to such effect will so provide.

Telephones. Evidence at the trial disclosed that the numbers of pay telephones in the cell blocks are insufficient to accommodate within a reasonable time inmates desiring to make calls. The public need to keep a person in custody pending trial does not justify cutting off his access to the outside world. He must be allowed to communicate by telephone with members of his family, or with anyone else he chooses, at all reasonable times. *O'Bryan v. County of Saginaw, Michigan*, 437 F. Supp. 582, 599 (E.D. Mich. 1977).

The defendants opposed any thought of increasing telephone access at the jail by pointing to the relatively high incidence of coin cheating or fraudulent reference to credit cards attributable to telephones presently there. Reasonable supervision and monitoring by the jail authorities should be able to limit somewhat this abuse, and the telephone company has or can find ways of forestalling "credit card" calls from a particular telephone. In any event, occasional abuse cannot justify an "across the board" denial or limitation of telephone access.

An adequate number of telephones should be sufficiently proximate to the modules that each of the inmates desiring to use them may make at least one call per day. The defendants will be required to propose plans for the appropriate numbers and locations of additional telephones.

Cell Searches. Jail authorities conduct "shakedown" inspections of the cells at irregular intervals in search of contraband or other items not allowed in the cells, such as food or excessive clothing or reading material. The defen-

dants insist that these searches are accomplished with minimum disruption of the inmates' possessions. The plaintiffs paint quite a different picture. They contend that their property is left in disarray; that items are unnecessarily removed and destroyed; and that valuable property is taken without a receipt being given. In *United States ex rel Wolfish v. Levi*, 439 F. Supp. 114, 149 (S.D. N.Y. 1977), Judge Frankel said, with respect to the identical problem:

> "Allowing inmates to observe from a reasonable distance the searching of their rooms would go far to eliminate these grounds of complaint. An officer viewed by the owner is more likely to fulfill the stated duty to put things back as they were. The claim of stolen property is far less likely to be made, the grounds for suspicion, or ostensible suspicion, being largely obviated. Having one's things searched is no pleasure in the best of circumstances. Being denied the right even to watch the invasion is a blunt oppression."

This court agrees. Future shakedowns should be made while the respective inmates remain outside their cells but near enough to observe the process and raise or answer any relevant inquiry.

Time For Meals. One of the grievances most frequently expressed by inmates that testified at the trial was that they were given insufficient time within which to eat their meals in the dining halls. The same contention was made before this court in the trial of the case of *Stewart v. Gates*, ___ F. Supp. ___ (C.D. Cal. 1978), which involved the Orange County Jail. The comments made in that decision are equally applicable here and are incorporated accordingly:

> "The court is sympathetic with the security concerns of the jail administrators when large numbers of inmates are congregated in a limited space in the presence of a relatively few unarmed deputies, which is what

occurs during the serving of meals, and I agree that such instances should not be prolonged more than necessary. However, mealtime is an important occasion to a prisoner, and he should be entitled to savor his food, along with a bit of conversation, rather than be obliged to eat in a hurried atmosphere. An inmate should be allowed not less than fifteen minutes at the meal table, and an order will be issued accordingly." (___ F. Supp. ___ at ___).

Clothing And Laundry. Under California law, as implemented by the Sheriff's Department Custody Division Manual, an inmate's mattress cover, towel, socks, undergarments and outergarments are required to be exchanged for clean items at least once each week. As of the time of trial, this had not been occurring with regularity. Inmates reported having worn the same denim pants and shirts for as much as a month or more, and such testimony was eloquently confirmed by the appearance of their garments. Some inmates have washed their clothing in the toilet or while taking a shower and have dried the items as best they could. The defendants assured the court that the shortage of clothing for exchange was due to a temporary logistics problem that soon would be corrected. The court is willing to assume that this is so.

However, a once per week change of clothing for prisoners has been held to be completely inadequate in a growing number of federal cases. *See*, for example:

Alberti v. Sheriff of Harris County, Texas, 406 F. Supp. 649, 677 (S.D. Tex. 1975) (daily exchange required);

Mitchell v. Untreiner, 421 F. Supp. 886, 898 (N.D. Fla. 1976) (daily exchange required);

Martinez Rodriguez v. Jimenez, 409 F. Supp. 582, 596 (D. P.R. 1976), *aff'd on other grounds*, 537

F.2d 1 (1st Cir. 1976); 551 F.2d 877 (1st Cir. 1977) (semi-weekly access to laundry required);

Hamilton v. Landrieu, 351 F. Supp. 549, 553 (E.D. La. 1972) (uniform laundry twice a week);

Inmates of Henry Cty. Jail v. Parham, 430 F. Supp. 304, 307, 308 (N.D. Ga. 1976) (laundry twice a week; clean uniform three times per week).

An inmate must be permitted at least twice per week to receive clean outergarments, undergarments, socks and a towel in exchange for those that he has been using. An order will be made to that effect.

Law Library For Pre-Trial Detainees. Pre-trial detainees representing themselves ("pro pers") have regular use of an adequate law library in the jail. Another law library, on the second floor, is available to sentenced prisoners. A third law library, purportedly quite inferior to the other two, may be used by pre-trial prisoners with appointed or retained counsel. If they desire to use the second floor library, they must seek the permission of the Legal Sergeant.

This jail official testified that the second floor library is relatively small and quite fully utilized by sentenced prisoners, and that he grants requests from others only if the applicant ". . . seems sincere and able to make use of it, rather than someone who is looking to use it just as an excuse to get out of their module for a while." He estimates that of the forty to fifty-five inmates that use the library each night, about fifteen are pre-trial prisoners who are there pursuant to permission.

The plaintiffs contend that the pre-trial detainees are entitled to unrestricted reasonable access to the second floor library. I am not able to agree. These inmates have counsel representing them in the pending proceedings, and they can supplement or second guess the work of their counsel with the help of the limited library available to them. If they can

show a legitimate reason why exhaustive research by them is necessary, they are accorded the use of the larger library. If they are refused a request for more extensive library facilities in order to prepare litigation challenging conditions at the jail, their attorneys can help with such litigation or at least assist them in gaining access to the better library. In addition, the jail has an arrangement with Southwestern University under which its law students, supervised by law professors, provide legal assistance to inmates regarding civil matters.

In light of all of these circumstances, plus the constant availability of "jailhouse lawyers", it is concluded that the "access to the courts" provided to inmates at the jail is fully in compliance with the requirements expressed in *Gilmore v. Lynch*, 319 F. Supp. 105 (N.D. Cal. 1970), *aff'd sub nom., Younger v. Gilmore*, 404 U.S. 15 (1971), and in *Bounds v. Smith*, 430 U.S. 817 (1977).

Brutality, Harassment And Abuse. The plaintiffs contend that the deputy sheriffs on duty at the jail regularly use excessive force in enforcing their orders, commit unprovoked assaults, inflict verbal abuse upon the prisoners, and generally conduct a "reign of terror" at the jail. Much of the trial was devoted to hearing testimony of alleged victims of, or witnesses to, such improper conduct, and to hearing the deputies' versions of such incidents.

Controversies of this kind are extremely difficult to resolve. On the one hand, the deputies have a most difficult job. Their obligation is to maintain control and enforce discipline under circumstances in which the use of some force occasionally is needed on a snap judgment basis. And yet, the deputies are obliged to treat inmates with reasonable courtesy despite the vilification frequently directed toward them and the constant threat of physical harm under which they work. When they respond reasonably to situations that

require immediate action, they must be upheld even though reflection in the calmness of the courtroom might lead to the conclusion that a softer response would have been preferable.

On the other hand, it is well known that there are such things as "badge happy" and sadistic custodial officers. And the courts, as well as jail administrators, have an obligation to protect inmates against them.

After evaluating the evidence as best I could, it seems clear that there is no "reign of terror" at the jail that requires court intervention. It is obvious that in some instances the deputies used excessive force upon an inmate that they believed to have been "out of line". But for the most part, the deputies that testified at the trial and those that I observed in the course of my visits to the jail impressed me as having an enlightened attitude concerning their obligation to be respectful of the sensibilities of their prisoners.

However, the record at trial did disclose that the inmates frequently were annoyed by excessive and sometimes insulting use of the loudspeakers by the deputies in charge of the modules. It is noisy enough in the modules without the deputies making unnecessary announcements or subjecting the inmates to uncalled for monologues. Such conduct is contrary to directives by the Sheriff, but it nonetheless is recommended that he give a renewed and emphatic reminder to all module deputies that misuse of the "intercom" will not be tolerated.

Cost Of Compliance. This court is well aware that compliance with portions of this decision will require some capital expenditures and increased operational costs. The court regrets this and is fully sympathetic with the budgetary problems faced by the County of Los Angeles, particularly in the present atmosphere of Proposition 13. Unfortunately,

however, these budgetary problems cannot be used to defeat the changes mandated by this decision.

If state authorities, on behalf of the public, authoritatively determine that it is necessary to incarcerate a person in the county jail, such determination carries with it the obligation to pay the cost of maintaining that person in harmony with such of his constitutional rights as are consistent with incarceration. In other words, he must be housed and fed and clothed and otherwise treated as a human being. In the judgment of the court, the requirements of this decision go no farther, and they must be enforced accordingly.

Implementing Judgment. Some of the actions envisaged by this memorandum of decision will require a reasonable amount of time for planning and preparation. The court would prefer to prepare the judgment implementing this memorandum after consultation with counsel in order that the time schedules contained therein may take into appropriate account the problems that will be involved. Accordingly, a judgment will be withheld pending further hearing scheduled for *Monday, August 14, 1978, at 2:00 p.m.*

DATED: July 25, 1978.

/s/ William P. Gray
WILLIAM P. GRAY
United States District Judge

3. Constitutional and Statutory Provisions.

United States Constitution, Amendment 14.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Code, Title 28.

§1343. Civil rights and elective franchise.

The District Courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42.

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

§2201. Creation of remedy.

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

§2202. Creation of remedy.

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

United States Code, Title 42.

§1983. Civil Action for Deprivation of Rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

§1985(3). Conspiracy to interfere with civil rights.

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the

laws, or for the purpose of preventing or hindering the constituted authorities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.